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May 7, 2003

VIACOM

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, Southwest
Washington, DC 20554

**Re: Ex Parte Notice – MB Docket No. 02-277; MM Docket No. 01-317; MM Docket No. 00-244**

Dear Ms. Dortch:

Attached is a letter to Paul Gallant of the Media Bureau, in response to a question he posed at our ex parte meeting on May 2, 2003.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter, as well as two copies of the written presentation, are hereby submitted for each docket.

Sincerely,

Anne Lucey

Anne Lucey

Attachment

cc: Paul Gallant
Linda Senecal
Mania Baghdadi
Qualex International

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May 7, 2003

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Paul Gallant
Special Advisor
Media Bureau
Federal Communications Commission
445 Twelfth Street, Southwest
Washington, DC 20554

Re: **Radio Market Definition**

Dear Paul:

Assuming that the Commission decides not to repeal the local radio ownership rule, but to replace the current contour-based rule for determining compliance with an Arbitron Metro-based approach, the question arises what radio stations should be considered a part of the "market." Viacom submitted the following proposal as part of our ex parte meeting with you and Nandan Joshi on Friday, May 2:

- Numerator – all commonly owned radio stations licensed to community located in the Metro, plus any commonly owned "out-of-market" radio station designated by Arbitron as "home" to the Metro.

- Denominator – all radio stations licensed to a community located in the Metro, plus all out-of-market radio stations with an Arbitron reportable share in the Metro, but excluding all commonly owned radio stations not included in the Metro.

Because Viacom based its proposal on a diversity analysis, at our meeting you asked how the proposal would also reflect competition in the market.

Viacom's Arbitron Metro-based approach builds upon the radio industry's established methodology of defining the relevant geographical market for the purpose of counting and ranking stations that compete for listeners. Viacom uses the geographical area defined by Arbitron as a Metro as the starting point. Viacom believes that all stations that are available to listeners in the Metro should be considered potential sources of competition.

This would include all stations licensed to communities located in the Metro, whether commercial or noncommercial. As you know, Arbitron's "Book" does not list every radio station in the Metro. The "Book" has a limited purpose, which is to assist media buyers and sellers. Noncommercial stations are not included in the Book, yet noncommercial radio stations garner significant audiences –and they do sell time, regardless of whether that time is classified as "sponsorships" or "underwriting" announcements. The number one station in San Francisco during the most recent Arbitron survey period was noncommercial station KQED(FM), but it is not listed in the Arbitron Book. In the real world, however, KQED(FM) competes for listeners with commercial radio stations, particularly news/talk stations. Similarly, in the Washington Metro, commercial station WGMS(FM) competes for a classical music audience with noncommercial station WETA(FM).

In many instances, commercial radio stations do not meet Arbitron's minimum reporting standards for inclusion in the Book, because they serve a narrow audience, which may not be fairly represented in an Arbitron survey, which is intended to estimate listening in certain demographic groups. For example, Arbitron does not estimate listening by children under 12, although some radio stations target a child audience. Radio stations that target minority, ethnic or specialized audiences also tend to be excluded from the Arbitron Book. For example, the Arbitron Fall 2002 Book for the Baltimore Metro does not list two AM radio stations owned by Viacom that broadcast gospel and religious programming. Both stations are economically successful – i.e., they have an audience and they bring in advertising revenues. Again, these stations are potential sources of competition in the market and cannot be ignored. The inclusion of all stations licensed to communities within the Metro in question, regardless of market share, reflects actual market conditions. The signals of these stations are available in the Metro and either compete or have the potential to compete for listeners and therefore ad dollars. Even though stations may not garner enough listening to be reportable in the Arbitron Book, these stations do exert competitive pressure and represent unrealized potential that would be relevant to a forward-looking competitive analysis.

Viacom believes that an Arbitron Metro-based market definition should also include out-of-market stations (i.e., stations not licensed to a community located in the Metro) if the out-of-market station has an Arbitron reportable share in the Metro. As an example of why this reflects the state of competition in a given Metro, let's look at the Riverside-San Bernardino Metro as an example. In that Metro, six of the top ten ranked stations are out-of-market Los Angeles stations. Any measure of competition in the Riverside-San Bernardino Metro must necessarily include the availability of competing Los Angeles Metro radio signals in the Metro.

To that end, Viacom has proposed that the Commission count all out-of-market stations that have a reportable share in the Metro under analysis. It is obvious that a station must be available in a Metro if it has reportable share of total listening. The fact that this competition spills over from another Metro market is irrelevant. These out-of-market stations with reportable share constrain the ability of a station owner in the Metro in question to exercise market power (e.g., raise prices) on its own and exert pressure on that station owner to offer compelling and innovative programming to compete for and retain listeners -- and, ultimately, ad dollars.

Viacom does not believe, however, that out-of-market stations should be included in the numerator unless a particular out-of-market station has been designated as "home" to the Metro under analysis. As Viacom understands Arbitron's reporting process, Arbitron permits an out-of-market station to designate itself as home to another Metro if the station meets Arbitron's minimum reporting standards for that Metro. In such circumstances, where an owner has elected to be designated as "home" to a particular Metro, then Viacom believes that it is only fair to include that station in the numerator for the purpose of determining whether the owner complies with the FCC's local ownership rule. To prevent gaming of the rules, Viacom suggests that such a station should be evaluated within two Metros – the Metro where its community of license is located and the Metro that it has designated as "home" – and required to demonstrate compliance with the local radio ownership rule in each Metro. Thus, for example, Viacom's WHFS(FM), which is licensed to Annapolis, Maryland, which is part of the Baltimore Metro, but which is "home" to the Washington Metro, would have to comply with the local radio ownership rule in both Metros.

Also to prevent gaming of the rules, Viacom would exclude from the denominator any out-of-market station with a reportable share in a Metro if commonly owned with the station under analysis. This is to address the so-called Pine Bluff or Minot problem, where, it is alleged, the denominator was artificially inflated by commonly owned stations included in the numerator. Thus, under Viacom's proposal, commonly owned stations would not be included in the denominator (i.e., would not be counted for purposes of determining the applicable ownership tier), unless also included in the numerator.

If you have further questions, please let me know.

Sincerely,

Anne Lucey

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